

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 29, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1940

Cir. Ct. No. 2012CM664

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD TERRY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: MARY KAY WAGNER, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Ronald Terry appeals pro se from a judgment of conviction and an order of the circuit court denying his postconviction motion. He

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

contended before the circuit court, as he does on appeal, that he “was not afforded a prompt judicial determination of probable cause made within 48 hours of his warrantless arrest.” He asks that we “vacate the criminal complaint, the judgment of conviction, the sentence, the special fee assessment, fines and other restraints [sic].” We conclude that the circuit court correctly denied Terry’s motion and affirm.

Background

¶2 According to the criminal complaint, on April 28, 2012, police responded to a 911 call Terry made from his residence and, upon interacting with Terry, observed a “strong smell of intoxicants” on him. Terry told them he went to a house a few blocks away to buy some “weed” and, while there, he was punched and someone swung at him with a hatchet, causing injury to his finger. Terry led officers around the area to show them where these events occurred, but the house could not be located. One of the officers then learned that Terry was on probation. Terry ran from the officers and did not stop despite several commands to do so. The officers caught up with Terry and directed him to the ground. Terry was taken to the jail where he provided a detective with a different story related to how his finger became injured. He also told the detective that he never ran from the officers or told them he had been trying to buy marijuana.

¶3 On May 8, 2012, Terry was charged with two counts of obstructing an officer related to his interaction with officers on April 28, 2012. The record indicates a probable cause hearing related to those charges was held that same day,

May 8, and bond was set.² Terry eventually pled no contest to one count of obstructing an officer and the other count was dismissed. He subsequently moved for postconviction relief and the circuit court summarily denied his motion without a hearing on the ground that it is frivolous. He appeals.

Discussion

¶4 Terry argues that he was denied a prompt judicial determination of probable cause while detained in the Kenosha county jail, in violation of his Fourth Amendment rights. We disagree.

¶5 Terry states on appeal that the officers who took him to jail on April 28 told him that they did so “for drinking on probation.” He states he was “booked into the Kenosha County jail for a PO Hold only without any criminal charges or arrest,” and was detained on a probation hold. At the same time, he also claims he was “arrested” on the probation hold and thus was constitutionally entitled to, but did not receive, a judicial determination of probable cause within forty-eight hours of being taken into custody.

¶6 A judicial determination of probable cause is generally required within forty-eight hours of a warrantless arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991); *State v. Koch*, 175 Wis. 2d 684, 696, 499 N.W.2d 152 (1993). However, there is a difference between being arrested on a criminal charge and being taken into custody and detained for authorities to

² Terry acknowledges he “appeared in open court” and was served with the criminal complaint on May 8, 2012.

investigate whether a probation violation has occurred. *See State v. Martinez*, 198 Wis. 2d 222, 542 N.W.2d 215 (Ct. App. 1995).

¶7 This case is very similar to *Martinez*. In that case, Martinez was on probation when his probation agent searched his residence and found marijuana, scales, and a drug ledger. *Id.* at 227. He was taken into custody and detained on a probation hold. *Id.* A week later a criminal complaint was filed charging him with possession of a controlled substance with intent to deliver and no tax stamp. *Id.* He made an initial appearance in court that same day and a probable cause determination was made. *Id.* at 227, 233-34. He was subsequently found guilty of the charges. *Id.* at 227-28, 233.

¶8 Like Terry here, Martinez argued that he was wrongly denied a probable cause hearing within forty-eight hours of his detention. *Id.* at 233. We concluded that Martinez was not under arrest when he was taken into custody on the probation hold and observed that “[c]riminal proceedings against Martinez were not instituted until the complaint was issued” a week after he had been taken into custody on the hold. *Id.* at 233-34. We further concluded that “[b]ecause ... Martinez was detained pursuant to a probation hold, the requirements of a probable cause hearing [were] not applicable.” *Id.* at 233.

¶9 The case before us differs in no material way from that in *Martinez*. Terry does not dispute that he was on probation on April 28, 2012, or that he was taken into custody and detained on a probation hold on that date.³ One and one-

³ The record also identifies that on May 18, 2012, ten days after the criminal complaint was filed, Terry filed a “Motion to Dismiss Charges with Prejudice” in which he stated: “On 4-28-12, Mr. Ronald Terry was taken into custody by Kenosha Police for a Probation Hold only. None [sic] Criminal Arrest.”

half weeks later, a criminal complaint was filed charging Terry with two counts of obstruction of justice related to his interaction with officers when they made contact with him on April 28. From the record and Terry's brief, it appears a probable cause hearing was held the same day he was criminally charged. Thus, as in *Martinez*, "the requirements of a probable cause hearing are not applicable" for the time Terry was detained on the probation hold, and once the criminal complaint was filed, he timely received such a hearing. *Id.* at 233.

¶10 The circuit court properly denied Terry's postconviction motion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

